

86 Ill. Adm. Code Section 130.2010(a), sets out the factors to be considered in determining whether a transaction is a lease or a conditional sales contract for purposes of the Retailers' Occupation Tax Act. (This is a GIL).

August 19, 2002

Dear Xxxxx:

This letter is in response to your letter dated June 11, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

My client, a truck rental company, is requesting written guidance regarding charges billed to customers renting trucks from locations in Illinois.

Background:

My client is engaged in the business of renting trucks weighing as little as 10,000 pounds gross volume weight and as heavy as 60,000 pounds gross volume weight to customers for periods that are generally less than 7 consecutive days. The trucks are rented to both household and commercial customers. (Household customers generally rent trucks to transport personal items, while commercial customers rent trucks to deliver inventory.) Customers renting trucks can purchase, at their option, personal accident insurance ('PAI') and a loss damage waiver ('LDW'). PAI protects the customer against personal liability should they be in an accident. LDW limits a customer's liability to my client should they damage a truck while it is being rented. Customers can also rent along with the truck furniture pads and utility dollies. In addition, a customer may be charged for fuel if the truck is returned with less than a full tank of gasoline. All charges are separately stated on the customer's rental invoice.

Issues:

- 1) Is my client required to collect Illinois Sales Tax on charges for PAI, furniture pads, utility dollies and fuel if the charges are separately stated on the rental invoice from other charges? Would your answer be different if the charges for the furniture pads and utility dollies were listed on an invoice separate from the rental charges? Please elaborate on your answers and provide a statute or regulation in support of your conclusions.

- 2) The rental company requires commercial truck rental customers to be covered by a general liability policy before renting a truck. If the rental customer does not have general liability insurance, the rental company will provide coverage to the customer for a fee. The fee charged to the rental customer is itemized on the rental invoice separate from the truck rental charges. Is the charge billed to the customer taxable for Illinois Sales Tax?
- 3) The customer rental agreement states that the customer will reimburse the rental company for damages caused to the vehicle while it is being rented. LDW is an agreement between the customer and the rental company where the rental company agrees to waive its right to collect financial damages from the customer should the truck be damaged while being rented. Is the fee charged for LDW taxable for the Illinois Sales Tax if the charge is separately stated on the customer's rental invoice? Please elaborate on your answers and provide a statute or regulation that supports your conclusion.
- 4) Some LDW agreements contain a provision where a customer is liable for a certain dollar amount of damages, much like a deductible in an automobile insurance policy. Customers that damage the vehicle and are covered by an LDW will be billed for the amount of damages up to the deductible amount listed in the agreement. Is the amount of the deductible billed to the rental and separately stated on the rental invoice taxable for Illinois Sales Tax? Please elaborate on your answer and provide a statute or regulation to support your conclusion.
- 5) On occasion, a customer renting a hand truck or furniture pad may not return the property to the rental company. The rental company will bill its customer for the cost of the equipment. Is the recovery charge billed to the customer taxable for Illinois Sales Tax if it's itemized on the invoice? Please elaborate on your answer and provide a statute or regulation that supports your conclusion.
- 6) From time to time, while being rented to them, a customer may damage a vehicle that is not covered by a loss damage waiver and be responsible for damages. If my client were to bill its customer for the damages, are the charges taxable for Illinois Sales Tax if they are separately stated on the rental invoice? Please elaborate on your answer and provide a statute or regulation that supports your conclusion.
- 7) From time to time, a citation may be issued on a vehicle that is owned by my client but under rental to the customer. As the registered owner of the truck, my client is responsible for paying all citations issued for violation of highway vehicle weight requirements. If my client were to bill the customer for reimbursement of the fine, is the charge taxable for Illinois Sales Tax if it is separately stated on the rental invoice? Please elaborate on your answer and provide a statute or regulation that supports your conclusion.
- 8) On occasion, due to road weight limits, a truck rental customer may need a permit from the government to drive a truck on the public highway. The truck rental company will pay for the permit and bill its customer for reimbursement. Is the charge for reimbursement taxable for Illinois Sales Tax if the amount is

separately stated on the customer's rental invoice from other charges? Please elaborate on your answer and provide a statute or regulation that supports your conclusion.

- 9) From time to time, a customer will return a truck in such condition that it is in need of a thorough cleaning. My client will bill its rental customer the charge for cleaning the vehicle and returning it to suitable condition. Are truck cleaning charges billed to rental customers taxable for Illinois Sales Tax if they are separately stated on the customer's rental invoice? Please elaborate on your answer and provide a statute or regulation that supports your conclusion.
- 10) Under the International Fuel Tax Agreement ('IFTA'), my client files returns that indicate the locations and miles traveled by its rental vehicles. Through IFTA, my client may pay a fuel use tax to one state and receive a refund from another. From time to time, a fuel use tax may be billed to commercial customers and appear as a separate line item on the rental invoice. Are charges for reimbursement of the fuel use tax my client pays taxable to the customer for Illinois Sales Tax? Please elaborate on your answer.

If you have any questions, please call me.

We refer you to 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes.

Lessors of tangible personal property, including trucks, in Illinois under true lease agreements are deemed to be the users of the items they purchase for rental purposes. True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors under true leases incur Use Tax liability on their cost price of tangible personal property purchased for rental purposes. See 86 Ill. Adm. Code 130.2010. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting and Use Tax found at 35 ILCS 155/1 et seq. Please note that the trucks you describe in your letter are not subject to the Automobile Renting and Use Tax.

A lessor of a truck under a true lease would incur Use Tax liability on its cost price of the rental truck and also upon the parts or accessories, such as furniture pads, dollies, oil, tarps, etc. that are rented with the truck. Since the lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales whose total receipts are subject to Retailers' Occupation Tax. Such would be the case when the agreements contain one dollar or other nominal purchase options.

Short-term leases of 7 days or less are normally true leases. For purposes of this response, we are assuming the transactions about which you have made inquiry are true leases.

The Illinois Use Tax liability of lessors engaged in true lease transactions is based on the cost price of rental items, and these cost prices generally do not include insurance fees, damage fees, permit charges, overweight fines, cleaning fees or fuel charges.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.